

31.10.2022
rc/ct.no.10
Item No.32

WPA No. 17295 of 2022

Mr. Asim Banerjee
Mr. Bholanath Pramanick ...for the petitioner

Mr. Soumitra Bandyopadhyay
Mr. Priyobrata Batabyal ...for the State

Mrs. Monika Roy ...for the NHAI

Heard learned counsels appearing on behalf of the parties.

Learned counsel appearing on behalf of the petitioner submits that pursuant to an order passed by a coordinate Bench of this Court on 03.09.2018 in WP No. 13944(W) of 2018, the application filed by the petitioner in objection to the compensation granted to him was dealt with and disposed of by the District Magistrate, Nadia. Being aggrieved by the said order, the petitioner submitted a memorandum of objection before the District Magistrate, learned Arbitrator on 23.09.2019 which has not been considered. The petitioner prays for a direction upon the District Magistrate and Arbitrator to consider the said objection submitted by the petitioner.

Challenging the maintainability of the writ petition, it is submitted on behalf of the respondents that since award under Section 3G(5) of the National Highways Act, 1956 (hereinafter referred to as "the Act of 1956") has been granted by the learned Arbitrator and such arbitral award has been received by the petitioner, the remedy of the writ

petitioner lies under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the Act of 1996”) and not before the writ court.

The relevant portion of the order passed by the coordinate Bench of this Court on 03.09.2018 in WP No. 13944(W) of 2018 is set out hereunder :-

“The District Magistrate, Nadia is directed to take up the application filed by the petitioner upon treating the same under Section 3G(5) of the said Act and efforts shall be made to dispose of the same within six months from the date of communication of this order in accordance with the provision contained under sub-section (6) of Section 3G of the said Act.”

Learned counsel for the petitioner repeatedly submits that the objection filed by the petitioner may be dealt with under Sections 3G(1) and 3G(2) of the Act of 1956.

It is crystal clear from the order of the coordinate Bench of this Court that the District Magistrate, Nadia, being the learned Arbitrator, was directed to deal with the application filed by the petitioner under Section 3G(5) of the Act of 1956. The order of the learned Arbitrator passed on 05.08.2019 in compliance with the order of the Court suggests that the arbitral award was granted by the learned Arbitrator on the said date and such award was

accepted by the petitioner on 11.11.2019 (page 17A of the writ petition).

As envisaged in Section 3G(6) of the Act of 1956, the provisions of the Act of 1996 shall apply to every arbitration under this Act.

In view of the above, this Court is inclined to hold that since the arbitral award under Section 3G(5) of the Act of 1956 has been passed by the District Magistrate and the learned Arbitrator and the petitioner has already accepted the arbitral amount, the petitioner may have a remedy to her grievance under the Act of 1996.

In view of the provisions laid down under Section 3G(6) of the Act of 1956 the writ court has no jurisdiction to direct the learned Arbitrator to deal with the objection submitted against an arbitral award.

Accordingly this writ petition being WPA No. 17295 of 2022 is dismissed as not maintainable.

There shall be, however, no order as to costs.

Urgent certified website copy of this order, if applied for, be furnished to the parties upon compliance of necessary formalities.

(Suvra Ghosh,J)